REMARKS

This invention provides the heterocyclic amide and imine derivatives, processes for their preparation, compositions comprising them and their as pesticides.

An election under 35 U.S.C. § 121 has been required to the subject matter of

I. Claims 1-19, drawn to compounds of formula (I) or (II) wherein X is CH-, corresponding process of preparation, composition and method of use, classified in class **546**, subclass 313+

II. Claims 1-2, 5-6, 9-11 and 13-19, drawn to compounds of formula (I) or (II) wherein X is =N-, corresponding process of preparation, composition and method of use, classified in class **544**, subclass 242+

III. Claim 20, drawn to a process of preparation of a compound of formula (VIII), c classified in class **544/546**, subclass various.

In response to the restriction requirement, Applicants provisionally elect the compounds of group I, claims 1-19, wherein X is =CH-, and the compound N-cyclohexylthio- (4-trifluoromethyl) nicotinamide as single disclosed species. This election is made with traverse and without prejudice to Applicant's right to file divisional applications directed to the non-elected subject matter. It is respectfully requested that the restriction requirement be favorably reconsidered and withdrawn.

The MPEP lists two criteria for a proper restriction requirement. First, the invention must be independent or distinct. MPEP §803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application "[i]f the search and examination of an entire application can be made without a serious burden, even though it includes claims to distinct or independent inventions."

Applicants respectfully submit that the compounds of Group I and II would retain structural similarity regardless whether the CH group or the N-group is substituted at the amide and imine derivative's carbon designated by letter X (see formula's I and II). In addition, these substitutions should not be subject to restriction as they are directed to the same inventive concept. Therefore, the searches of the prior art examining the amide and imine derivatives wherein the carbon designated as X is either =CH-, or =N-, should significantly overlap and thus should not constitute an undue or serious burden in searching and examining for the Examiner.

Further, applicants respectfully submit that Groups I, claims 1-19, wherein X is = CH-, should not be subject to restriction to single distinct species, such as N-cyclohexylthio- (4-trifluoromethyl) nicotinamide, a compound disclosed in Example A. This additional restriction would constitute an undue burden to Applicants as well as the public. The cost of prosecuting and maintaining additional patents, if the election of species is executed, is unreasonable in view of the fact that the compounds comprising claims 1-19 are closely related both structurally and functionally.

Furthermore, the applicant respectfully submits that the claim 20, drawn to a process of preparation of a compound of formula VIII (see claims of the application) should not be subjected to the restriction requirement for the reasons described below.

As described in the specification, the compound of Group I can be substituted at positions R^4 and R^5 (see specification) and then reacted with base in the presence of R^5-Z to produce compound VIII. This process is described by claim 20 wherein the compound Ia is claimed as one of the ingredients essential to the described synthesis of compound VIII.

Importantly, please note the compound VIII and the compound Ia and thus compound I, fall in the same search classes-544 and 546. Therefore, it is obvious that a search of the prior art when examining the claims 1-19 would at the same time result in a search of prior art for claim 20 and would not result in an undue or serious burden to the Examiner.

Lastly, MPEP 821.04 (Rejoinder) states in part that "Where product and process claims drawn to independent and distinct inventions are presented in the same application, applicant may be called under 35 U.S.C. 121 to elect claims to either the product or the process. See MPEP § 806.05(f) and § 806.05(h). The claims directed to the nonelected invention will be withdrawn from further consideration under 37 CFR 1.142. See MPEP § 809.02(c) and § 821 through § 821.03. ***However, if an applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined.***" (emphasis added)

As this paper is being filed within one month time period set forth in the outstanding Office Action, it is believed that no fee is due. However, if any additional fees are determined to be due for entry and consideration of this Response to Restriction Requirement, the Assistant

Commissioner is authorized to charge any fee or credit any overpayment to Deposit Account No. 50-0320.

Respectfully submitted,
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